

**REMARKS**

The present application stands with claim 11 rejected under 35 U.S.C. §101 as non-statutory subject matter. Claims 1, 6 and 11 have been rejected under 35 U.S.C. §102(b) as being anticipated by Luong. Claims 2 to 3, 5, 7 to 8 and 10 have been rejected under 35 U.S.C. §103(a) for obviousness over Luong in view of Goetz. Claims 4 and 9 have been rejected under 35 U.S.C. §103(a) for obviousness over Luong in view of Goetz further in view of Brown. For the reasons below, the amended claims are believed to be patentable over the cited references.

On a preliminary point, in his rejection of claims 5 and 10, the Examiner refers to column line and figure references of Luong that are identical to those raised in the office action dated May 12, 2005 using another cited document Flynn. We wonder whether this is in error.

Claim 11 has been canceled. Independent claims 1 and 6 have been canceled. Dependent claims 3, 5 and 10 have also been canceled. New independent claims 13 to 16 have been added so as to clarify the distinction over the cited art.

The new independent claims 13 to 16 relate to a base station being configured to receive information on the size of a data file to be sent to the user equipment to determine whether or not the available data storage capacity of the user equipment is sufficient to receive the full data file, and if not sufficient the base station does not send the data file; the base station also being configured to use the information specifying the size of the data file to be sent to determine whether there is sufficient battery charge available to receive the full data file, and if the battery charge is determined as not sufficient the base station does not send the data file. Neither Luong nor Goetz nor Brown disclose or suggest this combination of features, which advantageously helps to prevent data files being sent which cannot be received by mobiles.

Claims 2 and 4 have been made dependent upon new claim 13. Claims 7 to 9 have been made dependent upon new claim 14. The rejections of all



remaining dependent claims should also be removed inasmuch as all these claims are dependent on what are now believed to be allowable claims.

For the reasons above, the new independent claims are neither anticipated by nor obvious over the cited references and should accordingly be allowed. The dependent claims thereon should also therefore be allowed. Passage to issue of the subject application is therefore respectfully requested. Should the Examiner feel that the present application is not yet in a condition for allowance and that a telephone or personal interview would be helpful, he is invited to contact applicants' undersigned attorney at 973, 386 8252.

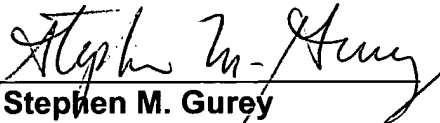
Respectfully submitted,

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